

# Selected Crime Victim Related Legislation Passed During the 2004 Session of the Virginia General Assembly

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## **Selected Crime Victim Related Legislation Passed During the 2004 Session of the Virginia General Assembly**

### **HB 604 Voter registration applications and records; lists.**

An Act to amend and reenact §§ 24.2-405, 24.2-406, and 24.2-418 of the Code of Virginia, relating to lists of registered voters and persons voting and to voter registration applications.

*Summary as passed House:*

**Voter registration applications and records.** Permits a person, who signs a statement that he is in fear for his personal safety from another party who has threatened or stalked him, to provide a post office box address, either for his residence or another location in the Commonwealth. The statement must be accompanied by evidence that the person has filed a complaint with a law-enforcement official in connection with the threat or stalking. The bill also excludes the residence address for these voters from publicly available lists of registered voters and persons voting and from the scope of the public inspection provisions on voter registration records.

*Patron:* Gear

### **HB 656 Assault and battery; penalty when committed against a family or household member.**

An Act to amend and reenact § 18.2-57.2 of the Code of Virginia, relating to assault and battery against a family or household member.

*Summary as passed House:*

**Assault and battery against a family or household member; penalty.** Revises the time period from 10 to 20 years in which three convictions for assault and battery against a family or household member must occur in order that the third one be a felony.

*Patrons:* Bell, Albo and Byron

### **HB 660 Aggravated sexual battery; applic. of ment. incapacity or phys. helplessness of complaining wit.**

An Act to amend and reenact § 18.2-67.3 of the Code of Virginia, relating to aggravated sexual battery.

*Summary as passed House:*

**Aggravated sexual battery.** Provides that aggravated sexual battery committed through the use of the complaining witness's mental incapacity is, in and of itself, without any additional factors considered, a felony offense. Under current law, one of the following additional factors would be necessary: (i) the complaining witness is at least 13 but less than 15 years of age, (ii) the accused causes serious bodily or mental injury to the complaining witness, or (iii) the accused uses or threatens to use a dangerous weapon.

*Patrons:* Bell and Albo

### **HB 718 Sexual abuse; definition.**

An Act to amend and reenact § 18.2-67.10 of the Code of Virginia, relating to definition of sexual abuse.

*Summary as passed House:*

**Definition of sexual abuse.** Adds to the definition of sexual abuse used in criminal cases: "the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts."

*Patron:* Shannon

### **HB 755 Death penalty; content of sentencing order when sentence of imprisonment for life imposed**

*An Act to amend and reenact § 19.2-264.5 of the Code of Virginia, relating to sentencing in death penalty cases.*

*Summary as passed House*

**Capital murder sentencing order.** Provides that when a court sets aside a sentence of death and imposes a sentence of imprisonment for life, it shall include in the sentencing order an explanation for the reduction in sentence.

*Patron:* Hurt

### **HB 863 Assault and battery; penalty when committed against a family or household member.**

An Act to amend and reenact § 18.2-57.2 of the Code of Virginia, relating to third offense of assault and battery against a family or household member; penalty.

*Summary as passed:*

**Third offense assault and battery against a family or household member.** Provides that upon a conviction for assault and battery against a family or household member, when the person has been previously convicted of two offenses of (i) assault and battery against a family or household member in violation of § 18.2-57.2, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the law of any other jurisdiction which has the same elements as any of the above offenses, in any combination, all of which occurred within a period of 10 years, and each of which occurred on a different date, the person is guilty of a Class 6 felony. Currently, the Class 6 felony applies only if the prior convictions were for assault and battery against a family or household member.

*Patrons:* Byron and Albo

### **HB 871 Infected sexual battery; penalty.**

An Act to amend and reenact § 18.2-67.4:1 of the Code of Virginia, relating to infected sexual battery; penalty.

*Summary as passed:*

**Infected sexual battery; penalty.** Provides that any person who, knowing he is infected with HIV, syphilis or hepatitis B has sexual intercourse, cunnilingus, fellatio, anallungus or anal intercourse with another person without having previously disclosed the existence of his infection to the other person is guilty of a Class 1 misdemeanor. The current law provision that it is a Class 6 felony to engage in such activity with the intent to transmit the infection to another person remains unchanged.

*Patrons:* Byron and Albo

### **HB 872 Identity theft; identification, issuance of an Identity Theft Passport.**

An Act to amend and reenact §§ 2.2-511, 18.2-186.3, 18.2-186.5 and 63.2-1809 of the Code of Virginia, relating to identity theft; fictitious name; DMV identity passport; authority of the Attorney General to institute or conduct criminal prosecutions in the circuit courts; penalties.

*Summary as passed:*

**Identity theft; fictitious name; identity theft passport; Attorney General to conduct criminal prosecutions; day care records; penalties.** Authorizes the Attorney General, with the concurrence of the attorney for the Commonwealth, to assist in the prosecution of the crimes of identity theft (§ 18.2-186.3) and the use of a person's identity with the intent to intimidate, coerce, or harass (§ 18.2-186.4). The bill allows for a conviction under the identity theft statutes when the defendant uses a false or fictitious name. The bill requires DMV, upon notification from the Attorney General that an Identity Theft Passport has been issued to a driver, to note the same on the driver's abstract. The bill directs child day programs that reproduce or retain documents of a child's proof of identity that are required upon the child's enrollment into the program to destroy them upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

*Patrons:* Byron, Albo and Dudley

## **HB 952 Adult protective serv.; change in prov., Com. of Dept. of Soc. Serv. to report on adult abuse, etc.**

An Act to amend and reenact §§ 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610 of the Code of Virginia, and to repeal § 63.2-1607 of the Code of Virginia, relating to adult protective services; penalties.

*Summary as passed:*

**Adult Protective Services; reporting and investigation procedures; adult fatality review teams; penalties.** Revises and adds new provisions to existing adult protective services law, including reporting and investigation procedures. The bill requires local departments of social services to initiate investigations of suspected adult abuse, neglect or exploitation within 24 hours of receiving a valid report, and requires them to notify the appropriate law-enforcement agency when in receipt of reports involving sexual abuse, serious bodily injury or disease believed to be the result of abuse or neglect, or criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm. When denied access to an adult in need of protective services, local departments are given authority to seek a court order, upon a showing of good cause, permitting such access.

The bill adds guardians, conservators and emergency medical services personnel to the list of persons who, acting in their official capacities, are required to report suspected cases of adult abuse, neglect or exploitation, and clarifies other mandated reporter provisions. Mandated reporters are required to report such matters to local departments or to the hotline immediately, and employers of mandated reporters must notify them of this requirement upon hiring. The bill adds employees of accounting firms to the financial personnel listed under the voluntary reporter provisions.

Anyone 14 years of age or older who knowingly makes a false report of adult abuse is guilty of a Class 4 misdemeanor, and a Class 2 misdemeanor for subsequent false reports. The bill also increases the initial time period in which involuntary adult protective services may be provided through an appropriate court order from five to 15 days.

Enactment clauses require (i) the Department of Social Services to develop a plan to educate newly mandated reporters on adult abuse, neglect and exploitation, and the delay of penalty provisions on newly mandated reporters until the delivery of such training; and (ii) the Secretary, in consultation with the Departments of Social Services and Health and other state and local entities, to establish procedures and cost estimates for the operation of adult fatality review teams to review suspicious deaths of vulnerable adults. This bill is identical to SB 318.

*Patrons:* Ebbin and Watts

## **HB 1055 Crimes and Offenses Generally (Title 18.2); revising and amending various statutes.**

An Act to amend and reenact §§ 17.1-805, 18.2-124, 18.2-374.3, and 19.2-299 of the Code of Virginia and to repeal §§ 18.2-111.1, 18.2-114, 18.2-123, 18.2-161, 18.2-202, 18.2-203, 18.2-211, 18.2-351, 18.2-352, 18.2-353, 18.2-358, and 18.2-367 of the Code of Virginia, relating to the revision of Title 18.2; repeal of certain statutes.

*Summary as passed:*

**Repeal of various statutes.** Repeals, by recommendation of the Title 18.2 Study Subcommittee of the Virginia State Crime Commission, 12 statutes in Title 18.2 that have been little used and whose offenses are covered by other statutes. In determining whether to recommend a statute for repeal the Subcommittee looked at various factors, including the date enacted, the number of convictions under the statute, whether the statute was the subject of any appellate court cases and whether the elements of the offenses were covered by other statutes. The statutes repealed include: conversion of certain military property, sale of goods of another and failure to pay over proceeds, dogs not permitted in Capitol Square, trespassers forbidden to jump on or off railroad cars or trains, false statements by purchaser of real property as to use for personal residence, false statement or willful overvaluation of property for purposes of influencing lending institution, unlawful use of words "Official Tourist Information," commitment of persons convicted of certain offenses, detaining male or female in bawdy place against his or her will and conspiring to cause spouse to commit adultery.

*Patrons:* Albo, Armstrong, Griffith, Kilgore and Moran; *Senators:* Howell, Norment and Stolle

### **HB 1059 Mandatory minimum punishment; definition.**

An Act to amend and reenact §§ 4.1-305, 18.2-36.1, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-121, 18.2-154, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 19.2-120, 30-19.1:4, 46.2-301, 46.2-341.28, 46.2-357, 46.2-391, 53.1-116, and 53.1-203 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-12.1, relating to definition of mandatory minimum punishment.

*Summary as introduced:*

**Mandatory minimum punishment.** Sets out a definition of mandatory minimum punishment to mean that the court shall impose the entire term of confinement, the full amount of the fine and the complete requirement of community service. Currently the term is used inconsistently throughout the Code. This is a recommendation of the Title 18.2 Study Subcommittee of the Crime Commission.

*Patrons:* McDonnell, Albo, Armstrong, Hurt, Kilgore and Moran; *Senators:* Howell, Norment and Stolle

### **HB 1083 Victim impact testimony; admission in proceedings.**

An Act to amend and reenact § 19.2-295.3 of the Code of Virginia, relating to admission of victim impact testimony.

*Summary as introduced:*

**Admission of victim impact testimony.** Clarifies that victim impact testimony is to be heard by the trier of fact whether the defendant is found guilty after trial or upon a guilty plea.

*Patrons:* Scott, E.T., Albo and Bell

### **HB 1093 Abuse and neglect of incapacitated adult; includes financial exploitation.**

An Act to amend and reenact § 18.2-369 of the Code of Virginia, relating to abuse and neglect of incapacitated adults; penalty.

*Summary as passed House:*

**Abuse and neglect of incapacitated adult.** Raises from a Class 6 felony to a Class 4 felony the penalty for abusing or neglecting an incapacitated adult where the abuse or neglect results in serious bodily injury or disease.

*Patron:* Moran

### **HB 1095 Trials; exclusion of witnesses.**

An Act to amend and reenact § 19.2-265.1 of the Code of Virginia, relating to exclusion of witnesses in criminal trials.

*Summary as introduced:*

**Exclusion of witnesses in criminal trials.** Provides that any victim who is to be called as a witness in a criminal trial shall be exempt from the rule authorizing the exclusion of all witnesses unless, in accordance with the provisions of § 19.2-265.01 (presence of victim would cause impairment of conduct of a fair trial), his exclusion is specifically required.

*Patron:* Moran

### **HB 1233 Dom. violence, sexual assault, stalking & violation of protect. order; training of persn. to handle.**

An Act to amend and reenact §§ 9.1-102, 16.1-253.2, 16.1-279.1, 19.2-81.4, and 63.2-1502 of the Code of Virginia, relating to family abuse and sexual assault, and violation of provisions of protective orders; penalty.

*Summary as passed:*

**Domestic violence; sexual assault.** Requires the Department of Criminal Justice Services to establish training standards and a model policy for protocols for local and regional sexual assault response teams. Provides that temporary child support may be one of the conditions imposed on a respondent in a family abuse protective order. The bill requires the state police and local law-enforcement agencies to have policies that provide guidance to officers on domestic violence incidents involving law-enforcement officers and repeat offenders. The Department of Social Services is required to establish minimum training requirements on family abuse and domestic violence for child protective services workers and supervisors. The Office of the Executive Secretary of the Supreme Court is required to determine appropriate standards for the approval of education and treatment programs for persons accused of assault and battery against a family or household member and arrange for such programs to be approved by an appropriate entity.

The bill also provides that a respondent to a protective order who commits an assault and battery resulting in serious bodily injury to a person protected by the protective order is guilty of a Class 6 felony. A respondent who violates the protective order by furtively entering the home of any protected party while the party is present or entering and remaining in the home of the protected party until the protected party arrives is guilty of a Class 6 felony. This bill is identical to SB 236.

*Patrons:* Griffith, Albo and O'Bannon

### **HB 1234 Domestic Violence Victim Fund; created.**

An Act to amend and reenact §§ 16.1-69.48:1 and 20-15 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 9.1 a section numbered 9.1-116.1, relating to domestic violence; fund for prosecutions.

*Summary as passed:*

**Virginia Domestic Violence Victim Fund.** Creates the Virginia Domestic Violence Victim Fund. The Fund is to be administered by the Department of Criminal Justice Services, and the resources used to support the prosecution of domestic violence cases and victim services. The Fund shall be supported by dedication of a portion of increased court fees. The bill provides that \$10 of the \$20 tax on marriage licenses goes to the Department of Social Services for providing services to victims of domestic violence. The Department of Criminal Justice Services, in cooperation with the Statewide Facilitator for Victims of Domestic Violence within the Office of the Attorney General, is required to make all reasonable efforts to secure federal funds or other grant monies for domestic violence prosecution and services.

*Patron:* Griffith

### **HB 1237 Sexually violent predators; civil commitment.**

An Act to amend and reenact §§ 37.1-70.5 through 37.1-70.9 of the Code of Virginia, relating to civil commitment of sexually violent predators.

*Summary as passed House:*

**Sexually violent predators; civil commitment.** The bill requires state and local courts, clerks and agencies to provide the CRC with information that it requests. The prisoner must remain in secure custody pending the circuit court hearing and the date for the circuit court hearing is extended to 60 days after filing the petition from the current 30 days. The bill also provides for a minimum 30-day continuance if less than full commitment is ordered, during which time alternatives to full commitment shall be developed. The bill allows presentence and postsentence reports and victim impact statements to be used in the civil commitment process.

*Patron:* Griffith



### **HB 1293 Sexual assault; venue for criminal prosecutions.**

An Act to amend and reenact § 18.2-359 of the Code of Virginia, relating to venue for criminal sexual assault.

*Summary as passed:*

**Venue for criminal sexual assault prosecutions.** Provides that venue for trial of any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of committing or attempting to commit criminal sexual assault is in any county or city in which any part of such transportation occurred. The bill also provides that when the county or city where the offense is alleged to have occurred cannot be determined, the trial of any person charged with committing or attempting to commit criminal sexual assault against a person under 18 years of age may be in the county or city in which the crime is alleged to have occurred or in the county or city where the person under 18 years of age (the victim) resided at the time of the offense.

*Patron:* Bell

### **HB 1307 Assault & battery; penalty for first offense when committed against a family or household member.**

An Act to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to persons charged with first offense of assault and battery against a family or household member.

*Summary as introduced:*

**Persons charged with first offense of assault and battery against a family or household member.** Allows a court to order participation in a local community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if such program is available, when a person charged with first offense of assault and battery against a family or household member is placed on probation under deferred proceedings.

*Patron:* Hurt

### **HJ 134 Health records; Joint Commission on Health Care to study use and disclosure thereof.**

*Summary as introduced:*

**Study; Disclosure of health records.** Directs the Joint Commission on Health Care to study the use and disclosure of health records relative to Virginia law and the federal Health Insurance Portability and Accountability Act (HIPAA). The Commission shall consider the need for amendments to Virginia laws and recommend ways to assist health care providers and other relevant parties to understand and comply with state and federal health record privacy laws.

## **HJ 196 Criminal code; State Crime Commission to develop plan for revisions to Title 18.2.**

*Summary as introduced:*

**Implementation plan for criminal code revisions.** Requests the Virginia State Crime Commission, in conjunction with the Virginia Sentencing Commission and the Office of the Executive Secretary of the Supreme Court, to develop an implementation plan for the revisions to Title 18.2 (Crimes and Offenses Generally) proposed by the 2004 General Assembly because of the widespread significance and volume of changes to Title 18.2 and the number of persons and entities who will be effected by the revisions.

*Patrons:* McDonnell, Albo, Armstrong, Griffith, Hurt, Kilgore and Moran; *Senators:* Howell, Norment and Stolle

## **HJ 225 Commonwealth's Attorneys; Crime Commission to conduct study of operations of offices.**

*Summary as introduced:*

**Study; Commonwealth's Attorneys.** Directs the Crime Commission to conduct a statewide study of the operations of the offices of the Commonwealth's Attorneys. The Commission shall study the quality of prosecutorial representation and the efficiency by which prosecutorial services are provided. The study of prosecutorial representation shall examine the impact, if any, of the existing workloads in the Commonwealth's Attorneys' offices, any disparity in workload per attorney, training and technical support for Commonwealth's Attorneys versus judicial and criminal justice system agencies, opportunities for continuing legal education specifically geared towards career prosecutors, and the Commonwealth's Attorneys' ability to hire and retain qualified prosecutors in their offices.

*Patrons:* McDonnell, Albo, Armstrong, Griffith, Hurt, Kilgore and Moran; *Senators:* Howell, Norment and Stolle

## **SB 236 Dom. violence, sexual assault, stalking & violation of protect. order; training of persn. to handle.**

An Act to amend and reenact §§ 9.1-102, 16.1-253.2, 16.1-279.1, 19.2-81.4, and 63.2-1502 of the Code of Virginia, relating to family abuse and sexual assault, and violation of provisions of protective orders; penalty.

*Summary as passed:*

**Domestic violence; sexual assault.** Requires the Department of Criminal Justice Services to establish training standards and a model policy for law-enforcement personnel in handling sexual assault and stalking cases and to establish training standards and model policy and protocols for local and regional sexual assault response teams. Provides that temporary child support may be one of the conditions imposed on a respondent in a family abuse protective order. The bill requires the state police and local law-enforcement agencies to have policies that provide guidance to officers on domestic violence incidents involving law-enforcement officers and repeat offenders. The

Department of Social Services is required to establish minimum training requirements on family abuse and domestic violence for child protective services workers and supervisors. The Office of the Executive Secretary of the Supreme Court is required to determine appropriate standards for the approval of education and treatment programs for persons accused of assault and battery against a family or household member and arrange for such programs to be approved by an appropriate entity.

The bill provides that a respondent to a protective order who commits an assault and battery resulting in serious bodily injury to a person protected by the protective order is guilty of a Class 6 felony. The bill also provides that if a respondent to a protective order seriously injures a protected party, or furtively enters and remains in the home of a protected party, he is guilty of a Class 6 felony. This bill is identical to HB 1233.

*Patron:* Norment

### **SB 276 Assault and battery; reporting of spousal abuse by active members of Armed Forces.**

An Act to amend the Code of Virginia by adding in Article 4 of Chapter 4 of Title 18.2 a section numbered 18.2-57.4 relating to spousal abuse by active members of the Armed Forces.

*Summary as passed:*

#### **Reporting of assault and battery of a spouse or partner by military personnel.**

Requires a court to report a finding of guilt of assault and battery of a household member by an active duty member of the United States Armed Forces to family advocacy representatives of the United States Armed Forces.

*Patron:* Wampler

### **SB 550 Family abuse; determination of predominant physical aggressor.**

An Act to amend and reenact §§ 9.1-102, 19.2-81.3 and 19.2-81.4 of the Code of Virginia, relating to arrest without warrant for family abuse, etc.

*Summary as passed:*

**Family abuse.** Changes the term primary physical aggressor to predominant physical aggressor in section that requires arrest in most family abuse cases when the law-enforcement officer has probable cause to believe that family assault or violation of a protective order occurred. The officer is required to arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the primary (now predominant) physical aggressor (unless there are special circumstances that would dictate a course of action other than an arrest). The bill sets standards for determining who is the predominant physical aggressor. This bill is a recommendation of the Family Violence Subcommittee of the Virginia State Crime Commission.

*Patrons:* Howell, Norment and Stolle; *Delegates:* Albo, Kilgore, McDonnell and Moran

### **SB 551 Protective orders; distribution of information by intake officer.**

An Act to amend and reenact § 16.1-260 of the Code of Virginia, relating to duties of intake officer; distribution of information on protective orders.

*Summary as passed Senate:*

**Juvenile courts; distribution of protective order information.** Requires juvenile court intake officers to provide to a person seeking a protective order a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders for family and household members. The Virginia State Crime Commission, in conjunction with the Office of the Executive Secretary of the Supreme Court and the Department of Juvenile Justice, is required to develop the written explanation and the Executive Secretary must make the explanation available to law enforcement and to each court service unit for distribution.

*Patrons:* Howell, Norment and Stolle; *Delegates:* Albo, Kilgore, McDonnell and Moran

### **SJ 131 Sexual assault; Dept. of Health to study st/wide response to victims & prevention thereof.**

Requesting the Department of Health to study the statewide response to sexual assault victims and the prevention of sexual assault. Report.

*Summary as passed:*

**Study; sexual assault** Requests the Department of Health, with primary assistance from the Department of Criminal Justice Services, to study the effectiveness of the statewide response to sexual assault victims and the prevention of sexual assault, and to make recommendations to the General Assembly.

*Patron:* Watkins